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Properties of integration

By Noel Pearson

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In his book *The Mystery of Capital*, Peruvian development activist Hernando de Soto set out his theory as to why countries in the Third World and the former communist states had failed to develop a capitalist economy that integrated the majority of their citizens. De Soto and his research institute undertook a decade of study into Third World cities, where they sought to calculate the assets of the poor. They found the homes and businesses of the poor living in the extra-legal sector represented enormous capital. And there was no shortage of economic activity, manufacturing and trade.

Why are the poor confined to the extra-legal sector?

De Soto fixed on what he considered to be the most profound difference between the West, where capitalism thrives, and those societies where the world's poor live. The poor lacked the legal infrastructure that captured transferable property rights and enabled capitalism. He wrote: "The poor do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation."

De Soto observed that people in the West took what lawyers call "fungible property" for granted, even though these property systems are recent developments: "It is an implicit legal infrastructure hidden deep within their property systems, of which ownership is but the tip of the iceberg. The rest of the iceberg isan intricate man-made process that can transform assets and labour into capital."

De Soto's thesis and the policy prescription that arose from it - a focus on the development of property systems to bring those living in the black economy into the formal economy - is not without its critics.

They point out that development programs require investments in a range of what Nobel laureate Amartya Sen calls capabilities: health, education, infrastructure, political freedoms and good governance.

De Soto's critics also focus on the implications of bringing the assets of the poor into the system of global capital. The poor will be rapidly dispossessed of their few assets; they will lose their land and livelihoods.

Despite the validity of these criticisms, one is left with a dilemma: should the poor remain in an economy where their assets are dead capital and cannot be used by them to grow wealth?

Or should they be exposed to the opportunities and risks of participating in capitalism?

Following its publication, I began to think about the relevance of de Soto's thesis to the position of Aborigines in Australia.

Aboriginal Australians do not have large populations engaged in trade and commerce in black economies on the fringes of large cities. We do not have the vast human markets and the experience and engagement in enterprise of these Third World situations. But the analysis about the poor being locked out of the ability to form capital because of our ownership of dead capital and inability to represent the assets we do have in fungible forms is relevant to our situation.

Aboriginal communities living on Aboriginal lands (though we own property) are not integrated into the Australian property system that enables capital formation. Most of our assets, in the form of land, housing, infrastructure, buildings, enterprises and the like, are inalienable and therefore have no capital value. And billions of dollars transferred from government to Aboriginal communities end up in the form of dead capital.

This dead capital trap has valid cultural explanations. It is one of the consequences of the communal nature of our traditional title land-holding. It is also a consequence of the principle of inalienable land title (which has its origins in the common law and has been given statutory force in relation to most forms of land title).

But there are also other reasons we are laden with dead capital. The laws that govern our property and asset ownership are unnecessarily complex and inefficient so that they make it too difficult to leverage value out of our assets.

The complicating factor is the dual role of our existing land base: facilitating economic independence and at the same time securing the connection with our ancestral lands and the preservation of a distinct indigenous Australian identity.

Defence of the underlying communal ownership of Aboriginal lands is not an irrational leftist construct or a policy promoted by self-interested Aboriginal elites; it is a grassroots opinion.

In my home, Cape York, Aborigines who develop enterprises are the strongest defenders of communal title and secure custodianship of the land. It is a cultural and social necessity to preserve the communal and inalienable nature of sufficiently large areas of Aboriginal land.

Having said that, it must be admitted that we need policies for transforming dead capital into fungible assets. This presents the central dilemma of indigenous affairs and reconciliation. We need to look at the kinds of lands held by indigenous people and the purposes for which they were purchased, claimed or granted: commercial lands, buildings, wharves, farms, housing and broad-scale traditional lands whose primary values are cultural but where resource development and tourism, and other such developments, may be most relevant and compatible.

We need to map these different species of indigenous land-holdings against their present and likeliest future use in economic development. In some cases, complete or limited alienability may be appropriate. Reconciling the risks and opportunities that come with integration into the capitalist marketplace requires serious thought to be given to the need for regulation. Regulation should facilitate fungibility but also protect poor people from dispossession. This applies to the poor in the developing world as well as indigenous people who live in the dead capital zone of the developed world.

It is in this light that we should view the debate about native title.

Last month, judge Murray Wilcox of the Federal Court upheld the Noongar people's claim on an area in and around Perth. Both the West Australian and federal governments have appealed the decision, citing uncertainty caused by the perceived inconsistency between the Noongar ruling and previous rulings such as the Yorta Yorta case in Victoria and NSW.

Instead of wasting time and money, these governments should be taking up the original proposal by the Noongar to negotiate a comprehensive settlement of their claims to their traditional lands.

The machinery of the Native Title Act was expanded by the Howard Government in 1998 to allow for flexible and comprehensive agreements to be negotiated and settled between governments and native title groups.

These indigenous land-use agreements can include the recognition of native title, but they can also provide for Aboriginal groups to be granted freehold and other forms of mainstream title to land.

If the Noongar are to participate in the economic life of Perth and to integrate into the Australian economy, they will need to own their homes and businesses. As well as inalienable communal lands, they will need private ownership vested in families. This will necessitate a combination of recognised areas where communal native title prevails as well as the negotiation of appropriate areas of freehold land.

WA Premier Alan Carpenter and Prime Minister John Howard should be working with the Noongar to integrate them into the social and economic life of the city that was built on their homelands.
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